

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MARVEL JONES,

Plaintiff,

vs.

KATHY HERIAN; ROSETTA MCALLISTER, R.N.;  
KRIS BOE SIMMONS; DAWN COLLINS;  
HUNTER LEWIS; MATTHEW LEWIS; SECURITY  
TEAM MEMBERS; COMPLIANCE TEAM  
MEMBERS; KOLTEN NEUHAUS; JAMES  
JOHNSON; TYLER STENDER; CHRIS  
NEUHAUS; CAMERON LIEWER; EDGAR  
OLIVAN; JOSH DIETERMAN; COREY BANKS;  
STEPHANIE OWENS; DON WHITMIRE; and  
DREW ENGLISH; in their individual capacities;

Defendants.

**8:20CV365**

**ORDER**

On June 9, 2021, the court entered a Memorandum and Order permitting certain of Plaintiff's claims to proceed to service of process. ([Filing No. 13](#)). After Plaintiff filed an amended pleading identifying the last names of the individual defendants, the court directed the United States Marshals Service to serve the individually named defendants at the Norfolk Regional Center. ([Filing No. 16](#)). The Marshals Service returned summons showing the majority of individual defendants were personally served at the Norfolk Regional Center on July 29, 2021. (Filing Nos. 19-22, 28-47). Those defendants filed motions to dismiss. (Filing Nos. 56 & 58). The court granted the motions, in part, but permitted the plaintiff's claim for procedural-due-process violations to proceed against defendants Kathy Herian, Rosetta McAllister, and Dawn Collins, in their individual capacities, and a Fourth Amendment unlawful seizure claim to proceed against defendants Kris Boe Simmons, Security Team Members, Compliance Team Members, Kolten Newhalve<sup>1</sup>, James Johnson, Matthew Lewis, Tyler Stender, Chris Newhaus, Hunter Lewis, Cameron Liewer, Edgar Olivan, Josh Dieterman, Corey Banks, Stephanie Owens, Don Whitmire, and Drew English in their individual capacities. ([Filing No. 60](#)).

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<sup>1</sup> The defendants clarify that this defendant is properly named Kolten "Neuhaus," not Newhalve, and the court has modified the caption accordingly. See [Filing No. 61](#).

The majority of the aforementioned defendants have now filed answers. (Filing Nos. 55 & 61). However, to date, the following defendants have not been served, filed an answer, or have otherwise appeared in this case: Kathy Herian, Chris Newhaus, and Josh Dieterman. The summons return for Kathy Herian indicates she is “retired.” ([Filing No. 26](#)). The summons return for Chris Newhaus indicates he is “not employed.” ([Filing No. 24](#)). The summons return for Josh Dieterman states he “does not work at Regional Center.” ([Filing No. 27](#)). Because these named defendants have not been served, have not been dismissed as defendants, and have not had counsel make an appearance on their behalf, the court must order they be served and provide them with an opportunity to respond before this case can progress. Accordingly,

**IT IS ORDERED:**

1. On or before **December 29, 2021**, the Assistant Attorney General of record in this case shall file a notice regarding whether he will accept service of process and/or intends to represent Kathy Herian, Chris Newhaus, and Josh Dieterman, in their individual capacities.
2. If the Assistant Attorney General does not intend to accept service and/or represent the defendants as provided in paragraph (1), the clerk of court is directed to obtain the last known addresses for Defendants Kathy Herian, Chris Newhaus, and Josh Dieterman from the Marshals Service for service of process on them in their individual capacities.
3. Upon obtaining the necessary addresses, the clerk of court is directed to:
  - a. Complete and issue summonses for Defendants Kathy Herian, Chris Newhaus, and Josh Dieterman in their individual capacities at the addresses provided by the Marshals Service; and
  - b. Deliver the summonses, the necessary USM-285 Forms, the Amended Complaint ([Filing No. 12](#)), a copy of the court’s June 9, 2021, Memorandum and Order ([Filing No. 13](#)), a copy of the court’s December 2, 2021, Memorandum and Order ([Filing No. 60](#)), and a copy of this Order to the Marshals Service for service of process on Defendants Kathy Herian, Chris Newhaus, and Josh Dieterman in their individual capacities. Service may be accomplished by using any of the following methods: personal, residence,

certified mail, or designated delivery service. See Federal Rule of Civil Procedure 4(e); Neb. Rev. Stat. § 25-508.01.

4. Additionally, to complete service of process on Kathy Herian, Chris Newhaus, and Josh Dieterman, as purported state employees and in accordance with Neb. Rev. Stat. § 25-511,<sup>2</sup> the Clerk of Court is directed to complete a summons form and a USM-285 form for such Defendants using the address “Office of the Nebraska Attorney General, 2115 State Capitol, Lincoln, NE 68509,” and forward them together with a copy of the Amended Complaint ([Filing No. 12](#)), a copy of the court’s June 9, 2021, Memorandum and Order ([Filing No. 13](#)), a copy of the court’s December 2, 2021, Memorandum and Order ([Filing No. 60](#)), and a copy of this Order to the Marshals Service. The Marshals Service shall serve the Defendant employees as required by Neb. Rev. Stat. § 25-511 at the office of the Nebraska Attorney General, 2115 State Capitol, Lincoln, NE 68509. See Fed. R. Civ. P. 4(e)(1); Neb. Rev. Stat. § 25-511; Neb. Rev. Stat. § 25-510.02.<sup>3</sup>
5. The court will further extend the deadline to complete service of process to January 31, 2022. The Clerk of Court shall set a case management deadline accordingly.

Dated this 21<sup>st</sup> day of December, 2021.

BY THE COURT:

s/Michael D. Nelson  
United States Magistrate Judge

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<sup>2</sup> “Any employee of the state . . . sued in an individual capacity for an act or omission occurring in connection with duties performed on the state’s behalf, regardless of whether the employee is also sued in an official capacity, must be served by serving the employee under section 25-508.01 and also by serving the state under section 25-510.02.” Neb. Rev. Stat. § 25-511.

<sup>3</sup> “The State of Nebraska . . . and any employee of the state . . . may be served by leaving the summons at the office of the Attorney General with the Attorney General, deputy attorney general, or someone designated in writing by the Attorney General, or by certified mail or designated delivery service addressed to the office of the Attorney General.” Neb. Rev. Stat. § 25-510.02(1).